

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

VOLKSWAGEN GROUP OF AMERICA, INC.,

Employer,

and

Case 10-RC-162530

UNITED AUTO WORKERS, LOCAL 42,

Petitioner.

BRIEF OF *AMICUS CURIAE*

AMERICAN COUNCIL OF EMPLOYEES

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STATEMENT OF INTEREST

The American Council of Employees (ACE) is a labor organization which represents the interests of approximately 265 full-time production team members at the Volkswagen auto manufacturing facility located in Chattanooga, Tennessee. Each of those individuals has signed a written authorization of his or her intent to be represented by ACE under the terms of the Community Organization Engagement Policy (COEP) established by Volkswagen for the purpose of maintaining ongoing communications between management and employees on a variety of issues. On October 23, 2015, the UAW filed a petition to represent a fraction of the production workforce at the Volkswagen-Chattanooga Operations facility, including “full-time and regular part-time maintenance employees.” At that time, a number of those maintenance employees were represented by ACE for purposes of Volkswagen’s COEP policy.

The Board’s interpretation of an appropriate bargaining unit within the production workforce at Volkswagen-Chattanooga Operations directly impacts each and every member of ACE. For maintenance team members, it will require that those individuals be severed from the remainder of those represented by ACE, with whom they share a community of interest and a desire to be aligned. This decision will also fundamentally alter the “One Team” approach fostered by Volkswagen, carving out a small group of employees from those other workers with whom they share a community of interest. Certainly, moreover, any future actions taken by this small micro-unit will have a direct and significant ripple effect upon the remaining production employees.

PRELIMINARY STATEMENT

The Board should grant the Employer’s petition for review and reverse the certification of the election results in this matter for the following reasons:

First, the certification of an arbitrary, fractured sub-unit which was selected by the union solely because of its successful organizing efforts within that sub-unit violates Section 9(c)(5) of the Act.

Second, the application of the “overwhelming community of interest” standard as interpreted in *DPI Secuprint* is tantamount to requiring complete identity within the proposed unit, an impossible standard which will result in irrational, fractured units bearing no relationship to the actual organization of the company.

Third, an overwhelming community of interest exists within the production department at Volkswagen-Chattanooga Operations, including the maintenance workers at that location.

Finally, the certification of an arbitrary, fractured sub-unit will have a tangible detrimental impact upon the other production workers not included in the unit.

ARGUMENT

A. The Certification of Arbitrary, Fractured Sub-Units Violates Section 9(c)(5) of the Act.

The new unit determination standard espoused in *Specialty Healthcare & Rehab. Ctr. of Mobile*, 357 NLRB No. 83 (Aug. 26, 2011), violates Section 9(c)(5) of the Act, which provides that the “extent to which employees have organized shall not be controlling” in determining an appropriate bargaining unit. 29 U.S.C. §159(c)(5). This standard is particularly critical in a case such as this, where in February 2014 the UAW failed in its attempt to organize all production employees at the Volkswagen-Chattanooga Operations facility, by a vote of 712-626. Recognizing their inability to organize an appropriate bargaining unit at the Volkswagen facility, the UAW has, in a patently obvious move, sliced out a small sub-group for no other reason than because the union feels that it has made its greatest inroads in organizing those employees. There is no relationship whatsoever between the proposed unit and the operational structure of

the employer. To the contrary, the proposed unit is haphazard, its only unique feature being the fact that a majority of its members are, unlike the remainder of the production employees at Volkswagen-Chattanooga Operations, in favor of the UAW. As is evident in the result here, the *Specialty Healthcare* standard allows the union to dictate, without viable challenge, the unit it personally desires, solely on the basis of the extent of its organizing efforts. This is contrary to the very letter of Section 9(c)(5).

B. The “Overwhelming Community of Interest” Standard as Interpreted in *DPI Secuprint* is an Impossible, Irrational Standard.

Compounding the above problem is the recent interpretation of the “overwhelming community of interest” standard as set forth in *DPI Secuprint, Inc.*, 362 NLRB No. 172 (Aug. 20, 2015). The *DPI Secuprint* approach renders it virtually impossible for an employer to challenge the bargaining unit hand-selected by the union. As a practical matter, the employees outside of the selected bargaining unit must be virtually identical in *all* respects in order to demonstrate an overwhelming community of interest. This result places too much emphasis upon the whims of the union, providing almost no latitude for challenge or review.

As discussed in greater detail in Section (C), below, Volkswagen-Chattanooga Operations’ maintenance workers do in fact share an overwhelming community of interest with the remainder of the production workforce at that facility; nevertheless, because their interests are not *identical*, it may be unlikely that they can overcome the overly-rigid *DPI Secuprint* standard. The result is the creation of irrational, fractured units which bear no rational relationship to the operational structure of the employer or interests of its workforce as a whole.

C. **An Overwhelming Community of Interest Exists Among All Production Team Members at Volkswagen-Chattanooga Operations.**

The arbitrary selection by the union of a bargaining unit including only maintenance employees bears no rational relationship to the operational structure in place at Volkswagen-Chattanooga Operations. The company follows a “One Team” approach for all production employees (including maintenance workers), who are divided into three manufacturing areas – Assembly, Body/Weld, and Paint. The company’s maintenance employees are embedded within production in those areas, and they are not separated or categorized into a distinct sub-group.

At a very fundamental level, maintenance employees share an extremely close community of interest with all other production employees. They work side-by-side. They have common overall management and supervision. They share the same compensation and bonus structure. Other critical terms and conditions of employment are identical, including, by way of example, their health and welfare plan, deferred contribution plan, paid time off, vehicle program, etc.

The UAW itself recognized the shared community of interest possessed by *all* production employees when it petitioned in January 2014 to organize a bargaining unit of all Volkswagen-Chattanooga Operations production personnel. Likewise, when Volkswagen created its Community Organization Engagement Policy (COEP) for the purpose of stimulating discussion with management regarding workplace issues, the UAW once again chose to group all production employees, including maintenance workers, together for purposes of representing their interests under the COEP. The union’s ongoing (and appropriate) inclusion of maintenance employees within production constitutes further evidence of the overwhelming community of interest among all production team members (including maintenance employees) at Volkswagen-

Chattanooga Operations. Under these circumstances, the current certification of an arbitrary, fractured unit is improper and should be reversed.

D. The Certification of an Arbitrary, Fractured Sub-Unit Will Have a Tangible Detrimental Impact Upon All Production Workers.

Finally, the certification of a unit comprised solely of full-time and regular part-time maintenance employees at the Volkswagen-Chattanooga Operations facility will have a very real and negative impact upon the remainder of the production team at that location. Changes to the terms and conditions of employment of those within the bargaining unit will certainly impact the terms and conditions of employment of those employees who are not in the bargaining unit. Any potential rising labor costs – which may occur without any voice whatsoever on the part of the remaining production team members – may impact job security within the plant; this possibility is particularly relevant at a multinational corporation such as Volkswagen, which has the ability to easily move jobs (or production) to alternate facilities in other transnational locations. Finally, any potential labor stoppages among maintenance employees at the Chattanooga facility would quite naturally and automatically impact all production workers. As a fundamental matter, the employment of all production employees should not be so directly impacted by the arbitrary selection of a small sub-group of workers, solely on the basis that the UAW had developed its strongest support amongst that fractured portion of the production department.

Under these circumstances, the limitation of the unit to an arbitrary, splintered sub-group is not appropriate under either the letter or the spirit of the Act, and should therefore be disallowed by the Board.

CONCLUSION

For the foregoing reasons, the American Council of Employees respectfully requests that the Board grant the Employer's petition for review; reverse the decision certifying the results of the election in this case; and reaffirm the longstanding Board precedent in unit determination cases when examining this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 23, 2015, a true and accurate copy of the foregoing Brief of *Amicus Curiae* American Council of Employees was served through the Board's electronic filing system on the Board, and by electronic mail upon the following:

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